

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MIGUEL E. JOAQUIN,

Petitioner,

-v-

WARDEN BRANDON J. SMITH,

Respondent.

CIVIL ACTION NO.: 21 Civ. 9372 (PAE) (SLC)

ORDER

SARAH L. CAVE, United States Magistrate Judge:

Petitioner Miguel E. Joaquin's request (ECF No. 6) for a 45-day extension of time to file a declaration (the "Declaration") showing cause why his Petition should not be denied as time-barred is GRANTED. Mr. Joaquin shall file the Declaration by **March 4, 2022**.

As set forth in the Court's November 19, 2021 Order to Show Cause (ECF No. 5), Mr. Joaquin should include a listing of the dates when: (1) he filed all postconviction motions in the state courts challenging his Conviction, including any petition for a writ of error coram nobis, other motions under N.Y. Crim. P. L. § 440, and any other postconviction motions; (2) any of those postconviction motions were decided; (3) any appeals or applications for leave to appeal from those decisions were filed; (4) those appeals or applications were decided; and when (5) Mr. Joaquin received notice of any state court decisions on those applications and appeals. See 28 U.S.C. § 2244(d)(2).

Mr. Joaquin should also allege any facts showing that he has been pursuing his rights diligently and that some extraordinary circumstance prevented him from timely submitting this petition. See Holland v. Florida, 560 U.S. 631, 649 (2010) (holding that one-year limitations period


under § 2244(d) for habeas corpus petitions under 28 U.S.C. § 2254 is subject to equitable tolling in appropriate cases).

If Mr. Joaquin timely files the Declaration, the Court will review it, and if proper, will order the Respondent to answer. If Mr. Joaquin fails to comply with this Order within the time allowed, and cannot show good cause to excuse such failure, the Court will recommend that the Petition be denied as time-barred. No answer shall be required at this time.

The Clerk of Court is directed to mail a copy of this order to Mr. Joaquin at the address below and to note service on the docket.

Dated: January 19, 2022
New York, New York

SO ORDERED.



SARAH L. CAVE

United States Magistrate Judge

Mail to:
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